

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85667426
LAW OFFICE ASSIGNED	LAW OFFICE 108
MARK SECTION (no change)	
ARGUMENT(S)	
Applicant respectfully requests that Examiner remove the 2(d) refusal as the distinct visual appearance of Applicant's mark has not been adequately considered in conjunction with the distinct differences in sound and commercial impression. Applicant notes where there is an addition of a distinctive element, as in a term or a design, or there is a significantly different display of the same terms, there is little likelihood of confusion. First Savings Bank, F.S.B. v. First Bank Systems, Inc., 40 U.S.P.Q.2d 1865 (10th Cir. 1996) (no confusion between FIRST BANK and FIRST BANK SYSTEM (and design)). Likelihood of confusion is minimized where a design is used as part of a mark. HarlemWizards, 952 F. Supp. At 1096 (citing McCarthy at §23:15[51]).	
SIGNATURE SECTION	
RESPONSE SIGNATURE	/LB/
SIGNATORY'S NAME	Luke Brean
SIGNATORY'S POSITION	Attorney of Record, Oregon State Bar
SIGNATORY'S PHONE NUMBER	(800) 451-5815
DATE SIGNED	11/09/2013
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Sat Nov 09 20:06:08 EST 2013
TEAS STAMP	USPTO/RFR-50.139.40.51-20 131109200608240853-856674 26-5007c3a4739b188c6df27e f0d53b9c294a5ed55c42f9cd8 284992c3e4c666a6d7-N/A-N/ A-20131109200120877506

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **85667426** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Applicant respectfully requests that Examiner remove the 2(d) refusal as the distinct visual appearance of Applicant's mark has not been adequately considered in conjunction with the distinct differences in sound and commercial impression. Applicant notes where there is an addition of a distinctive element, as in a term or a design, or there is a significantly different display of the same terms, there is little likelihood of confusion. First Savings Bank, F.S.B. v. First Bank Systems, Inc., 40 U.S.P.Q.2d 1865 (10th Cir. 1996) (no confusion between FIRST BANK and FIRST BANK SYSTEM (and design)). Likelihood of confusion is minimized where a design is used as part of a mark. HarlemWizrdards, 952 F. Supp. At 1096 (citing McCarthy at §23:15[51]).

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /LB/ Date: 11/09/2013

Signatory's Name: Luke Brean

Signatory's Position: Attorney of Record, Oregon State Bar

Signatory's Phone Number: (800) 451-5815

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85667426

Internet Transmission Date: Sat Nov 09 20:06:08 EST 2013

TEAS Stamp: USPTO/RFR-50.139.40.51-20131109200608240

853-85667426-5007c3a4739b188c6df27ef0d53

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